

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF OKLAHOMA**

R. WAYNE JOHNSON,)	
)	
Plaintiff,)	
)	
v.)	Case No. CIV-16-1137-D
)	
SUZANNE MITCHELL, <i>et al.</i> ,)	
)	
Defendants.)	

ORDER

Plaintiff R. Wayne Johnson, a Texas prisoner who appears *pro se*, filed this case on September 29, 2016. It was Plaintiff's third case filing in this Court since August 18, 2016. In prior cases, the assigned magistrate judges have recommended that the actions be dismissed for failure to pay the required filing fees. *See Johnson v. United States*, Case No. CIV-16-947-M, R&R (W.D. Okla. Sept. 12, 2016); *Johnson v. Mardel Bookstore, Inc.*, Case No. CIV-16-1032-M, R&R (W.D. Okla. Oct. 31, 2016). In the first case, Magistrate Judge Suzanne Mitchell determined from publicly available court records that Plaintiff is barred from proceeding *in forma pauperis* under 28 U.S.C. § 1915 by operation of the "three strikes" provision of § 1915(g).

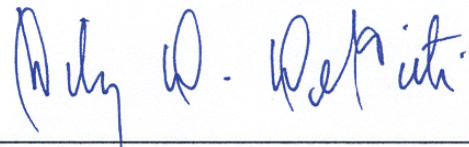
The Court's research confirms the correctness of Judge Mitchell's determination. *See Johnson v. Whatley*, 73 F. App'x 79 (5th Cir. 2003) (finding Plaintiff had accumulated four strikes and § 1915(g) applied); *Johnson v. Thaler*, No. 2:10-CV-041, 2012 WL 612529, R&R (N.D. Tex. Feb. 14, 2012) (listing abusive case filings and recommending sanctions), *adopted*, 2012 WL 624581 (N.D. Tex. Feb. 27, 2012); *see also*

Johnson v. Two Unknown U.S. Marshals, Civ. Action No. 08-5522, 2008 WL 5190888 (E.D. Pa. Dec. 9, 2008) (applying § 1915(g)); *Johnson v. Ramos*, No. 1:06CV516, 2006 WL 2639511 (E.D. Tex. Sept. 13, 2006) (applying § 1915(g)).

In this case, Plaintiff has neither paid the required filing fee nor requested leave to proceed without prepayment under § 1915. In the Complaint, Plaintiff asserts civil rights claims for damages and seeks a writ of mandamus against the magistrate judges who issued unfavorable reports in his prior cases, Judge Mitchell and Judge Shon T. Erwin. Plaintiff does not allege that he is “under imminent danger of serious physical injury.” *See* 28 U.S.C. § 1915(g). Therefore, because Plaintiff has not paid the filing fee and because he cannot bring this action without prepayment, the Court finds that the action should be dismissed without prejudice to refiling.

IT IS THEREFORE ORDERED that Plaintiff’s action is DISMISSED without prejudice. A separate judgment of dismissal shall be entered.

IT IS SO ORDERED this 3rd day of February, 2017.



TIMOTHY D. DEGIUSTI
UNITED STATES DISTRICT JUDGE